No. 22,670

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Appellants,

vs.

PACIFIC MARITIME ASSOCIATION, a California non-profit corporation, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Appellees.

APPELLANT'S CLOSING BRIEF.

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Prefatory Statement.

The divions and subdivisions of the argument herein are numbered so as to coincide with the same numbering used by Appellees in their counter-part to the Point. The exception is Point IX hereof, which includes therein Points IX, X and XI of Appellees' brief.

ARGUMENT.

I.

REPLYING TO APPELLEES' POINT I AND THE SUBDIVISIONS THEREUNDER, JURISDICTION UNDER SECTION 301(a) OF THE NATIONAL LABOR RELATIONS ACT CARRIES WITH IT, IN REGARD TO ARBITRATIONS, THE RIGHT OF REMEDY PROVIDED BY THE UNITED STATES ARBITRATION ACT, 9 U.S.C. SECS. 1 ET SEQ.

a. The Substantive Law to Be Applied in Relation to the Jurisdiction Provided by Section 301(a) Is the United States Arbitration Act.

Appellant's position is not that the source of the lower court's jurisdiction, in regard to the application of the *United States Arbitration Act, 9 U.S.C.* Secs. 1-10, was other than that provided by Section 301(a) of the *Labor Management Relations Act.* Appellant's position is that once jurisdiction attaches that in regard to arbitration matters, the remedies provided for by the *Arbitration Act,* or remedies analogous to those of the *Arbitration Act,* are applicable.

Neither the case *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1957) or *General Electric Co. v. Local 205* (1957) cited by Appellees, alters the situation. Each of such cases was decided the same day, and as set forth in the *General Electric Co.* case, *supra,* were "companion" cases, with the *General Electric* case relying upon the decision in the *Textile Workers* case, *supra.* The issue involved was whether or not the Norris La Guardia Act barred enforcement of Arbitration Agreements. The court in the *Textile Workers'*

case, *supra,* did not confine the law which is applicable under Section 301 to common law; in discussing the law to be applied, the court, at page 457, stated:

> "But State law if compatible with the purpose of Sec. 301, may be resorted in order to find the rule that will best effectuate the federal policy (citation). Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights."

The court continued at page 458:

> "* * * We see no justification in restricting Sec. 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of the Act."

The Court in *Textile Workers Union v. Lincoln Mills of Alabama, supra,* arrived at the foregoing after reviewing, at pages 455 and 456, the legislative history of Section 301, which provided that the section contemplated, not only law suits for damages, but other remedial proceedings, both legal and equitable, including suits of interested individual employees under the *Declaratory Judgments Act.*

The applicability of the *United States Arbitration Act* to arbitrations involving collective bargaining agreements has been discussed and sustained in the Circuit Courts. In *Mogge v. District No. 8, International Ass'n. of Machinists* (7th Cir. 1967), 387 F. 2d 880, 883, the Court stated:

> "District No. 8's argument that the United States Arbitration Act is inapplicable is foreclosed in this Circuit by Pietro Scalzitti v. International Union of Operating Engineers, 351 F.2d 579, 579-580 (7th Cir. 1965)."

In *Local Union No. 11 International Brotherhood of Electrical Workers v. G. P. Thompson Electric Inc.* (9th Cir. 1966), 363 F. 2d 181, 182, the cross motions which went up on appeal were "based on Sec. 9 of the United States Arbitration Act."

See also: *American Machine and Foundry Co. v. United A., A., & A., Implement Workers,* 256 F. Supp. 161, affirmed 329 F. 2d 147 (2d Cir. 1964). *Local 205 United Electrical, Radio and Machine Workers of America v. General Electric Company,* 233 F. 2d 85, 100 (1st Cir. 1956).

The legislative intent was that Section 301 would encompass proceedings both legal and equitable, and forms of relief previously provided by Congress. The *United States Arbitration Act* encompasses the rule that will best effectuate the National Labor Policy and is effective as a manner of relief from or enforcement of arbitration proceedings previously had. No other provisions for a form of relief are available.

Further, though the grounds set forth in plaintiff's First Cause of Action were analogous to the grounds for relief set forth by the *United States Arbitration Act,* 9 U.S.C. Sec. 10 [TR. pp. 72, 73], plaintiff's Second Cause of Action was based upon violation of public policy as evidenced by the National Labor Policy. These allegations also encompassed the majority of the issues also raised by plaintiff's First Cause of Action and the pleadings and proof thereof have been previously set forth in Points D through D-5 and F, of Appellant's opening brief. When public policy is set forth as a reason to vacate an arbitrations award, the court must evaluate its content. *Metal Products Workers Union Local 1645 v. Torrington Co.,* 358 F. 2d 103, 105 (2nd Cir. 1966), *Local 453 International Union of Electrical Radio and Machine Workers v.*

Otis Elevator Co., 314 F. 2d 25, 29 (2nd Cir.), Cert. denied, 373 U.S. 949.

The lower court failed to evaluate or find upon the pleaded matters relating to public policy and the National Labor Policy. What appellee's argument in regard to the applicability of the Arbitration Act does is to evidence the magnitude of the error of the lower court in not considering what appellees urge "the policy of our National Labor Laws" in regard to the matters set forth in the Second Cause of Action, and therefore vacating the arbiration award.

Appellees' citation of *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574 (1960) does not support appellees' position. The *United Steelworkers* case, *supra,* solely involved the issue of whether or not arbitration should be compelled. The court held that due to the nature of collective bargaining agreements, the run of arbitration cases illustrated by *Wilko v. Swan,* 346 U.S. 427, were irrelevant in determining whether arbitration should be compelled.

b. Appellant Was the Principal Involved in the Arbitration and Has Primary Right to Set the Decision Aside.

Appellees overlook the fact that the Pacific Coast Longshore Agreement is a "trade agreement," not a contract of employment, and at all times during the alleged circumstances of cases five through twelve, Pete Velasquez was solely employed by and paid by Appellant, Local 13, and not in any manner under the "Trade Agreement." (Point C, pp. 41-45, App. Op. Br.). Pete Velasquez was at all times during the alleged incidents of cases five through twelve, an elected official of Appellant, Local 13, and his only contract of employment was the Constitution-By-Laws and General Rules of

Local 13. The Constitution provides the manner of Mr. Velasquez' election, his duties, his compensation, and paragraph 6 of the General Rules, page 41, provides: "6. *Salaried officers shall not accept any longshore work during their term of office,* * * *" [TR. p. 86].

Appellees allude to the authority of an "exclusive bargaining representative." The only authority that a "bargaining representative" may have is derived from Sections 7 and 9 of the *National Labor Relations Act* (29 U.S.C. Secs. 157, 159). Section 9(a) limits the collective bargaining to a "unit" and the collective bargaining for the "unit" to rates of pay, wages, hours of employment or other conditions of employment (*Ford Motor Company v. Huffman,* 345 U.S. 330, 336, 337 (1953).

Certainly the appellees cannot contend that appellant's employees are part of a bargaining "unit" which Appellee, ILWU, represents for the purpose of collective bargaining with the Appellee, PMA, or that the Appellee, PMA, has the right to negotiate for the rates of pay and the hours and conditions of employment of Appellant, Local 13's employees. Such a contention would lead to a flagrant violation of Section 8(a)(2) of the Act, which prohibits an employer from "contributing financial or other support to a labor organization."

Such a position would lead to the same coercion which Local 13 complained of in the lower court, that is, as long as the decision of the arbitrators remain in effect, the officials of Local 13 must either bow to the will of the PMA or suffer the same consequences suffered by Pete Velasquez (Point D-3, App. Op. Br.).

The Area Arbitrator found Velasquez guilty on ten cases, to-wit: cases three (3) through twelve (12). The Area Arbitrator arbitrated cases five (5) through

twelve (12) *ex parte.* Each of these latter eight (8) cases involved Velasquez solely as a union official (Appendix I); however, the Area Arbitrator rendered only one decision containing his opinion and conclusions as to all the cases therein.

The Area Arbitrator's *ex parte,* acts as to cases numbered five (5) through twelve (12) were not and could not have been taken under the "trade agreement" as Velasquez was not part of the bargaining unit, for he was not employed under the trade agreement. As to cases numbered five (5) through twelve (12) the only contract of employment affecting Velasquez was the Constitution-By-Laws and General Rules of Local 13. Local 13's officials are not a bargaining unit over which either appellee can arbitrate or claim jurisdiction. Arbitration is a matter of contract and a party cannot be required to submit to arbitration a dispute which he had not agreed to submit. *United Steelworkers v. Warrior and Gulf Navigation Co., supra,* page 582. There was not only a contract between Appellee, PMA, and Appellant, Local 13, to arbitrate matters regarding its official, appellant had refused to enter into such an arbitration.

Had not cases five through twelve been outside the bargaining unit, the result would still be the same, for appellees ignore the salient facts in urging Appellant Local 13 as a sub-agent of the ILWU, and in urging the ILWU to be the exclusive bargaining agent with the exclusive right to attack the arbitration awards.

The arbitration proceeding before the Area Arbitrator was had by Appellee PMA, against Appellant Local 13, as the principal, the ILWU was not a party. The award is set forth as Appendix I and is captioned:

In the Matter of a Controversy

Between

PACIFIC MARITIME ASSOCIATION

Complainant

and

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13

Respondent

The issue is set forth on the first page of the arbitrator's decision as follows:

> "Issue: Employers' Complaint Filed Against Pete Velasquez, #3499 (New No. 31090) Claiming Violations of Current Agreement."

The arbitration award clearly shows that in eight (8) of the ten (10) cases in which Velasquez was found guilty, he was employed as a business agent of Appellant, Local 13 (Appendix I, pp. 2, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18).

The Pacific Coast Longshore Agreement, Sec. 17.15 provided that the grievance procedure had to be exhausted before one could use other remedies outside of the agreement. Section 17.261 of the Pacific Coast Longshore Agreement provided means for referring a dispute regarding an arbitration to the Joint Coast Labor Relations Committee, and if the "Committe cannot agree, to the Coast Arbitrator for *review.*" Pete Velasquez was employed under the "Trade Agreement" as to cases three and four, and the procedure was followed to exhaust the remedy, with the Coast Arbitrator noting Pete Velasquez' appeal (Appendix II, p. 2).

After exhausting the procedure, Appellant Local 13 filed its action which was removed to the lower court. Local 13 brought Appellee ILWU into the action on

two grounds. One ground was based on the allegation that the ILWU was a party in interest who had refused to join in the action and was therefore named therein as a defendant [TR. p. 67]. The Second ground was the ILWU's participation in the conspiracy to bring about the award [TR. p. 73].

The lower court found that the Joint Coast Labor Relations Committee considered the grievance and "were unable to agree on a resolution of the matter and it was *referred* to the final step in the arbitration process, a *hearing before Sam Kagel, the Coast Arbitrator*" [TR. p. 615, Find. 15] (emphasis added). The lower court further found "a hearing was held before the Coast Arbitrator at which the employee and union were represented by officials of the ILWU." [TR. p. 615, Finds. 15, 16].

Local 13 was not a sub-agent in regard to the arbitration, as urged by appellees. Local 13 was the principal in the arbitration and selected as such by the Appellee, PMA, who chose Local 13 as its adversary. Plaintiff, Local 13, was the only adversary of the PMA in the arbitration; the subsequent hearing "*for review*" as provided by Section 17.261, was tantamount to an appeal from the area arbitration with Local 13 remaining the principal being represented by the ILWU on the appeal. The hearing before the Coast Arbitrator was the final step in the same arbitration which was conducted against Local 13 before the Area Arbitrator. In such Area proceeding, Local 13 and the employee were represented by officials of Local 13 [TR. p. 614, Find 11].

The appellee recognized the position of Local 13 by bringing its counter-claim against Local 13 to confirm the arbitrator's decision [TR. pp. 141, 142]. The lower court recognized the position of Local 13 by confirm-

ing the award against the Local [TR. p. 639]. To allow the bringing of an arbitration against a local and thereafter deny the Local relief therefrom, not only lacks mutuality but accomplishes an absurd result. The Appellee, PMA, who brought the arbitration against Local 13, is estopped to deny appellant's position as a principal to the arbitration and appellant's right to seek relief.

The case of *J. I. Case Co. v. National Labor Relations Board,* 321 U.S. 332 (1944), cited by appellees, does not support appellees' position that appellant could not maintain the action in the lower court: The case in fact supports appellant's right to maintain the action; at page 336 the court stated:

> "But, however engaged, an employee becomes entitled by virtue of the Labor Relations Act somewhat as a third party beneficiary of the collective trade agreement. * * *"

Likewise, the United States Supreme Court in *Smith v. Evening News,* 371 U.S. 195 (1962) held that an individual member was given the right by the *National Labor Relations Act* of 1947, Section 301, to sue for violation of the collective bargaining agreement and upheld the suit being brought in the member's name. Further, when the employer and Union conspire to deprive an employee of his rights, then the normal procedural remedies have failed and irrespective of the provisions of the collective bargaining agreement, as to who may proceed to seek the remedies, an action may be brought by the member in court to obtain the required relief and completely settle the issues. *Hiller v. Liquor Salesman's Union Local No. 2 (*2nd Cir. 1964), 338 F. 2d 778, 779. The conspiracy was pleaded in paragraph XXI of appellant's complaint [TR. pp. 73, 74] and the proof thereof was set forth under Point I of Appellant's opening brief.

The above holdings are consistent with the legislative history of Section 301, which, as set forth in *Textile Workers Union v. Lincoln Mills, supra,* page 453, showed that the "aggrieved party" should have a right of action in the Federal Courts, and at page 456, set forth that "interested individual employees" should have a right of action under Section 301.

Appellant had the right to proceed to set the award aside as a principal; in fact, it was appellant's duty. Such duty was recently recognized in the case of *International Union v. Hoosier Cardinal Corp.,* 383 U.S. 696, 700, 86 S. Ct. 1107, 16 L. ed. 192, where the court allowed the Union to sue in regard to a collective bargaining agreement, to recover on behalf of its members without assignment of their claims. In doing so, the court, at page 700, stated:

> "Any . . . labor organization may sue . . . in behalf of the employees whom it represents in the courts of the United States * * *"

Velasquez was a member of appellant's Local 13, and no other membership or right of representation is shown for him. The first page of the Pacific Coast Longshore Agreement provides that the Agreement is entered into by the International Longshoremen's and Warehousemen's Union "on behalf of itself *and each and all of its longshore locals in California,* Oregon and Washington . . . and all employees performing work under the *scope, terms and conditions of this Agreement.*" (emphasis added). Appellant's rights under the Agreement are established.

It is worthy of note that the first paragraph of the "Trade Agreement" along with Section 1.71 each confine the effect of the Agreement to those working under it.

Appellant's responsibility for a contractual violation of the Pacific Coast Longshore Agreement is clear. *United Electrical and R&M Workers v. Oliver Corp.*, (8th Cir. 1953) 205 F. 2d 376. If appellant is bound by the contract, it can seek relief thereunder. If appellant had the duty to arbitrate, appellant had the correlative right to set the arbitration award aside for any error arising therein. If appellant did not have the duty to arbitrate, then the *ex parte* arbitration is void, and being void, the appellant has the right to proceed to set same, together with its effect, aside, as same does not arise under the collective bargaining or any agreement.

Appellee's brief note in regard to exclusive jurisdiction of the National Labor Relations Board is dealt with in Point V of this Brief.

II.

ANSWERING APPELLEES' POINT II, APPELLANT WAS NOT REQUIRED TO PLEAD OR PROVE BAD FAITH ON THE PART OF THE ILWU TO RECOVER: HOWEVER, LOCAL 13 DID PLEAD AND PROVE SUCH BAD FAITH.

a. Local 13 Was Not Required to Show Hostile Discrimination or Invidious Conduct on the Part of the ILWU.

The opposition to the above matter set forth by appellee has previously been covered by Point I hereof and Points A and B, pages 33 to 45, of appellant's opening brief, and does not require further answer.

1. The Result Reached in the Grievance Procedure Is Subject to Being Set Aside.

The cases of *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960), *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S.

593 (1960) and *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574 (1960) do not support the proposition for which appellee cites them, to-wit, that courts will not review the merits of the controversy or substitute their interpretation of the collective bargaining agreement.

In both *United Steelworker of America v. American Mfg. Co., supra,* and *United Steelworkers of America v. Warrior and Gulf Navigation Co., supra,* the lower courts weighed the evidence and decided the merits of the issue as to whether or not there was an arbitratable grievance prior to any arbitration, and therefore denied arbitration, neither case is in point. In the case of *United Steelworkers v. Enterprise Wheel and Car Corp., supra,* the court at page 596 held that the refusal of the courts to review the merits of the award was a proper approach, and at page 597, stated:

> "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse the enforcement of the award."

The arbitration Agreement in the case of *United Steelworkers v. Enterprise, supra,* was extremely liberal and the arbitrators' powers were not restricted as Sections 17.52, 17.53, and 17.62 the present agreement restrict the arbitrator. The agreement further provided that the award shall be "final and binding." However, even with the liberal provisions, the court set limitations upon the arbitrator's power and provided for the setting aside of the award on review. Appellees and the lower

courts' position are tantamount to urging that relief cannot be granted under any circumstance, other than by breach of duty of fair representation, such a position is tantamount to urging that any entity performing the representation is never in a position to seek relief, regardless of the result.

The matter is more fully covered in Points G and J of appellant's opening brief.

2. Local 13 Has Shown a Breach of the Duty of Fair Representation, Though Not Required to Do so to Prevail.

As urged by appellees, the principal issue is not that as confronted the Supreme Court in *Humphrey v. Moore,* 376 U.S. 335 (1964); the principal issue is appellant's rights to have the decisions of the arbitrators set aside on grounds analogous to the *Arbitration Act, 9 U.S.C.* Secs. 1-10, or on the grounds of the decision's violations of public policy as evidence by the National Labor Policy and set forth in Points F and D through D-5, of appellant's opening brief. However, due to appellant's pleading of appellees' connivance and conspiracy to bring about the fraud, undue means and other acts involved in obtaining the arbitrator's decisions appellant was entitled to any and all relief available and the doctrines of *Humphrey v. Moore, supra,* and *Vaca v. Sipes,* 386 U.S. 171 (1967).

Appellees rely heavily on the case of *Humphrey v. Moore, supra,* and refer extensively to its holding; however, appellees ignore the distinguishing factors of the case. The case did not involve arbitration and was an action brought by a member against both the Local Union and the International Union, alleging the Local Union deceitfully connived with the International Union to deprive plaintiff therein and others of employment rights, (p. 343). As was set forth in the concurring opinions of Justices Goldberg and Brennan, the action

was an "individual employee's action for a union's breach of its duty of fair representation." (p. 351).

In the present case, appellant, as a party to the collective bargaining agreement and as the principal involved in the arbitration, has the right to set the decisions of the arbitrators aside, the plaintiff had no such right in *Humphrey v. Moore, supra,* and his Local Union brought about the matter of which he complained. Additionally, in the present case, Appellant, Local 13, also has the right to assert such additional grounds, for the benefit of the local and its member as may exist for lack of fair representation. Both the appellant, Local 13, and its member, Pete Velasquez, were damaged and continue to be damaged as Appellee, PMA, continues to coerce and harass the officers of Local 13 with threats of deregistration under the arbitrator's decisions [TR. pp. 412, 413, 446].

As was set forth in *Vaca v. Sipes, supra,* the duty of fair representation is breached when the union's conduct is either *"arbitrary, discriminatory, or in bad faith."* (p. 190). In the present case, the lower court found "that the award manifestly disregards the collective bargaining agreement and the law" [TR. p. 618, Find. 18 K], and that the ILWU acquiesced in the award which was "flagrantly against Union principles" [TR. p. 618, Find. 18 I]. These findings alone were sufficient to show each of the three grounds for breach of the duty, any one of which is sufficient to prove a breach of the duty of fair representation. These findings arose from an arbitrator's decision which was based upon the representation of International President, Harry Bridges, before the Arbitrator, and were a result of the breach of his duty. However, many additional grounds for breach of the duty of fair representation exist, many of them being set forth in App. Op. Br. at Point I, pp. 102-106).

b. Local 13 to Be Successful, Is Not Required to Show That the ILWU Acted Outside Its Authority as Collective Bargaining Agent; However, Such Showing Was Made.

Local 13 Does Not Have to Attack the Collective Bargaining Agreement.

Appellees urge that Local 13, to succeed, must attack the collective bargaining agreement, not the award. The premise is not well founded and the attack need not be directed to the collective bargaining agreement.

First, as Appellee continues to do throughout its brief, Appellee bases its argument on the erroneous premise that a union official is a longshoreman. Section 1.71 of the Agreement provides the definition of a longshoreman which is: "The term 'longshoreman' as used herein shall mean any man *working under this Agreement.*" (emphasis added). Paragraph 6, page forty-one (41) of the Constitution-By-Laws and General Rules of Local 13 [TR. p. 86] provides: "Salaried officers shall not accept any longshore work during their term of office * * *." The Pacific Coast Longshore Agreement is a "trade agreement" and not a contract of employment; therefore, Local 13 officers who were solely employed by and paid by Local 13 could not be either employees or longshoremen under the Pacific Coast Longshore Agreement. *MacKay v. Lowes, Inc.,* 182 F. 2d 170, 172 (9th Cir. 1950) *International Union v. Hoosier Cardinal Corp.,* 383 U.S. 696.

The foregoing is more fully covered in Point C, pages 45-48 of appellant's opening brief. As Pete Velasquez was not employed under the Pacific Coast Longshore Agreement in Cases 5 through 12, the question of the Pacific Coast Longshore Agreement or Section 17.81 (providing for deregistration of longshoremen) thereof have no application as to those cases. The

arbitration was *ex parte* without authority or agreement to arbitrate, a matter which was completely outside of the Pacific Coast Longshore Agreement.

Appellees continue by asserting that "the Coast Arbitrator applied the contract provisions in accordance with the expressed intent of the parties to the contract" and continue by quoting out of context a portion of *United Steelworkers v. Enterprise Corp.,* 363 U.S. 593, 599 (1960) for the proposition that Local 13 would therefore be bound by the award, even though they could show *Humphrey v. Moore* discrimination. Even though the *United Steelworkers* case provided that the arbitration award would be "final and binding" and had much more liberal terms for arbitration than the Agreement in question, the case at page 597, provided that the Arbitrator is confined to interpretation and application of the Agreement, does not sit to dispense his own brand of industrial justice, that the award is legitimate only so long as it draws its essence from the collective bargaining Agreement, and when the Arbitrator's words manifest an infidelity to this obligation, the Courts have no choice but to refuse to enforce the award.

Section 17.52, 17.53 and 17.62 of the Collective Bargaining Agreement confine the Arbitrator to interpreting the Agreement as written, and Section 22.1 provides that the Agreement cannot be amended, altered, modified or changed, except by written agreement between the parties. The arbitrator, being restricted to the interpretation of the Agreement as written, could not, as is more fully set forth in Point H-2 of Appellant's opening brief, arrive at a conclusion applying Section 17.81 to union officials. In addition, irrespective of the wording of the Agreement, the Coast Arbitrator could not apply Section 17.81, or any other provision of the Agreement, to one not employed there-

under. The Agreement is a "trade agreement," not a contract of employment, and appellant's officials are not and cannot be employed thereunder.

Appellees, as they again do later in their brief, are apparently relying upon the statements of Harry Bridges as being the intent or interpretation of Section 17.81. If the Arbitrator so relied on such statement, then he exceeded his power by not interpreting the "trade agreement" "as written" and wrongfully brought about a modification of the contract which was not in writing, as required by Section 22.1. By doing so, the Arbitrator would become a part or tool of the connivance and conspiracy alleged in appellant's complaint as he participated in wrongfully extending the interpreted effect of the collective bargaining agreement to penalize and deregister Pete Velasquez for activities that did not and could not come under the purview of the "trade agreement." Such a procedure would also constitute a procuring of the award by "undue means" or in excess of the arbitrator's "powers," therefore subjecting the award to being set aside under the *Arbitration Act,* 9 U.S.C. Sec. 10.

Local 13 Has Shown That the ILWU, in Agreeing to the Interpretation of Section 17.81, Acted Outside of Its Authority, Though It Need Not Do So.

Appellees urge the case of *Ford Motor Company v. Huffman,* 345 U.S. 330 (1953) for the proposition that in agreeing to Section 17.81, the ILWU acted within the scope of its bargaining authority. First: the bargaining authority of the ILWU was for longshoremen employed by the PMA, not union officials employed by Local 13. Second: *Ford Motor Company v. Huffman, supra,* does not support appellees' position.

Ford Motor Company v. Huffman, supra, involved the negotiation of provisions giving seniority credit for military service. The court, at page 322, stated:

> "Nothing in the National Labor Relations Act, as amended, so limits the vision and action of a bargaining representative that it must disregard *public policy and national security.*" (emphasis added).

The *Ford Motor Company* case differs greatly from the present case in that they are exact opposites. The *Veterans Preference Act* and the Secretary of Labor had adopted a similar policy of veterans' preferences (pp. 340-341) and the Union, in the *Ford Motor Company* case, was merely furthering public policy as evidenced by the *Veterans Preference Act* and the Secretary of Labor. In the present case by applying Section 17.81 to Union officials, appellees were proceeding directly against the provisions of the *National Labor Relations Act* and Public Policy, as evidenced by the National Labor Policy. The manner in which the decision was violative of the provisions and intent of the *National Labor Relations Act* and Public Policy, as evidenced by the National Labor Policy, are set forth in Points D through D-5 and Point F of appellant's opening brief.

The authority of every bargaining representative is derived from the *National Labor Relations Act,* more particularly Sections 7 and 9, *Ford Motor Company v. Huffman, supra,* pp. 336, 337. Section 9(a) *limits* the collective bargaining to a "unit" and collective bargaining for the "unit" to rates of pay, wages, hours of employment, or other conditions of employment. The

foregoing gives no rights in regard to appelllant's officials. First, the appellee employer cannot claim appellant's officials, who are appellant's employees, to be in their bargaining "unit" while they are solely employed and paid by appellant. Second, the International whose only right to bargain arises from the *National Labor Relations Act,* cannot contract or agree contrary to the Act. Any such contract or agreement would be outside of their authority and void.

In regard to the "wide range of reasonableness" which appellees claim the ILWU has in bargaining, such bargaining right was limited at page 178 of the case of *Vaca v. Sipes, supra,* "to serving the interests of all members without hostility or discrimination *toward any,* * * *" (emphasis added). The discrimination toward Pete Velasquez is clearly shown by the fact that he was the only official to which 17.81 was ever applied, even though had the application been possible, there was then greater cause to apply it against prior union officials [TR. p. 397]. The same discrimination was shown by the statement of Mr. McEvoy (PMA's Area Manager) that they were out to get Velasquez and deregister him for what he had done as a union official, as he knew the contract too well [TR. pp. 421, 422]. The discrimination reached its ultimate when Harry Bridges sacrificed Velasquez to gain the belly packing issue [TR. p. 424], particularly after Bridges had previously told Velasquez, in a hostile and angry manner, that he was the only one who could save him before the Coast Arbitrator, but he, Velasquez, was done, through and all washed up [TR. p. 447, 202, 203]. The point of discrimination and bad faith is more fully covered in Point I of appellant's Opening Brief, pp. 102-106.

Section 17.81 Is Not Within the Range of Reasonableness When Applied to Union Officials.

Appellees urge that Section 17.81 of the Pacific Coast Longshore Agreement is within the range of reasonableness. This may be correct when one correctly considers the agreement as a "trade agreement" and properly excludes from its effect and operation, all persons who are not employed thereunder. However, for the reasons set forth herein and those set forth in appellant's opening brief, when Section 17.81 is applied to union officials who are employed and paid by the union, the section not only exceeds the range of reasonableness—it goes outside of the bargaining "unit." There is no power whatsoever for the employer and the ILWU to bargain for the right for the employer PMA, to take action against Local 13's officials; such a procedure not only goes outside of the bargaining "unit," it violates other provisions of the *National Labor Relations Act* and Public Policy.

Further, Section 17.81 by its terms and the terms of Section 1.17 does not include union officials (See Point H-2, App. Op. Br.). Appellees' references to the statements of Harry Bridges adds nothing, for the arbitrators were limited to the contract as written. If the arbitrators considered Mr. Bridges' statement, which the Coast arbitrators' decision evidences he did, (Appendix II, App. Op. Br.), then the Coast Arbitrator exceeded his power, and not only did not construe the contract as written—he illegally modified it contrary to the express provisions of Section 22.1 and became a part of the connivance and conspiracy.

Local 13 Does Not Have to Show Bad Faith in the Negotiation of Section 17.81.

Appellant does not, as set forth by appellee, have to show that there was bad faith in the negotiations of Section 17.81. As previously set forth, 17.81, as written, does not and cannot include union officials; it is appellee's and the Coast's arbitrators' erroneous conclusions and excess of powers which include union officials in Section 17.81. However, had Section 17.81 been negotiated to include union officials, it would then be void as previously set forth as being violative of and contrary to Public Policy and the *National Labor Relations Act.*

III.

THE EVIDENCE ADDUCED BY LOCAL 13 WAS MORE THAN SUFFICIENT TO RAISE MATERIAL ISSUES OF FACT REGARDING THE IMPROPER CONDUCT OF THE ILWU.

The appellees merely follow the approach taken by the lower court and instead of considering the facts in a light most favorable to appellant as was required, *Poller v. Columbia Broadcasting System,* 386 U.S. 464, 473, appellees, as the lower court did, take the facts out of context, depriving them of their meaning and effect, and attempt to justify a small portion of such facts. The matter is dealt with in appellant's opening brief at Point M, pp. 116-119, and Point P., pp. 121-123; however, appellant sets forth herein a few of the more patent examples of the effect of the omissions and removal from context of the evidence referred to at pages 33-35 of appellees' brief. Appellant, for simplicity, follows appellees' numbering.

B. In referring to the conversation, appellees fail to consider and include that Ward was an International Officer on the Joint Coast Labor Relations Committee, and that Velasquez was intending to run against Ward, and the conversation continued with Ward stating they

would take care of Velasquez up there [TR. pp. 409, 410 and 432].

C. and D. The statements fail to consider and include the facts that the only times when the PMA President, Paul St. Sure and ILWU President, Harry Bridges, appeared at the port together, the result was to take action against Local 13 and that Bridges consistently took the position of the employer, PMA, and failed to support the Local, such action included a 13 day lock out of Appellant, Local 13, by the employer, PMA, which was supported by Bridges and which was a violation of Section 11.1 of the Pacific Coast Longshore Agreement and of much greater magnitude than anything complained of by Appellee, PMA, in its ex parte arbitration and deregistration of Pete Velasquez [TR. pp. 410, 438, 439, 448, 450].

E. E not only contains omissions—it is not supported by the record in that it was not a request to live up to the arbitrator's decision regarding jurisdiction. The more salient facts which were omitted are that the arbitrator called, prior to hearing Cases 5 through 12, and after expressing his opinion that Velasquez was guilty, requested that the President of Local 13 at least go through the motions of a defense so that it would look better [TR. p. 440].

F. First, there is no evidence that Bridges is an "outstanding" labor leader, and the threatening and hostile manner of Bridges' statements is ignored. Further, Bridges stated in a hostile and angry manner, that he was the only one who could save Velasquez before the Coast Arbitrator, but that Velasquez was done, through, and all washed up. [TR. p. 447, 202, 203].

G. The issue omits the fact that Bridges stated they had to *sacrifice* Velasquez to gain the belly-packing issue. This clearly shows discrimination under *Vaca v. Sipes, supra,* which at page 178 provides that the obli-

gation is "to serve the interests of all members without hostility or discrimination *toward any.*" (emphasis added). Further, there is no evidence to support the contention or finding that there was a larger number affected by the "belly-packing" issue than the Velasquez issue. Due to the coercive effect, the Velasquez issue affected the entirety of Local 13, whose jurisdiction consisted of the Los Angeles-Long Beach Harbors [TR. p. 446]. (Point D-3, App. Op. Br.). The belly-packing issue affected Portland, which for all the record shows, could have been one-fifth the size of Local 13 [TR. pp. 423, 424].

H. H. ignores the fact that while a union officer, Pete Velasquez won substantially all of the labor disputes, including arbitrations, and that the statement of the PMA's Area Manager was that they were going to deregister Velasquez for what he had done as a union official, as he knew the contract too well [TR. pp. 397, 421, 422].

I. The claim of Local 13 that the position of Harry Bridges flagrantly violated union principles, was itself a finding of the lower court, which found: "That the ILWU acquiesced in the Coast Arbitrator's award which was 'flagrantly against union principles.'" [Find. 18, I., TR. p. 618].

J. The conversation alleged between the arbitrators and found by the court, is non existent and not supported by the record. The conversation was between the arbitrator and Local 13's President, Curt Johnston, and in effect the arbitrator was in the position of an advocate trying to solicit Curt Johnston to accept the award and give up the Local's right to redress. The arbitrator suggesting that Velasquez, to be registered, would have to agree not to run for office again [TR. pp. 443, 444].

IV.

THE CONFLICT BETWEEN FINDING 18K AND CONCLUSION II IS PATENT.

Appellees indulge in rationale as to why Conclusion II is not in conflict with Finding 18K. However, the plain wording of the Conclusion and Finding show the conflict to be patent. Conclusion II sets forth that the awards and decisions of the arbitrators "* * * were and are in complete accordance with the terms of the Collective Bargaining Agreement * * *." Finding 18K provides: "That the award manifestly disregards the Collective Bargaining Agreement and the law." It is difficult to fathom how the award could "manifestly" disregard the Collective Bargaining Agreement and the law and at the same time be in complete accordance therewith.

The other findings to which Appellees contend no objection was made, do not support the award as urged by appellees. The findings merely confirm that an arbitration was had.

Appellees' urging of *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574, 578, adds nothing to their position. The United Steelworkers' case solely involves the issue as to whether or not arbitration should be compelled. Due to the nature of a collective bargaining agreement which may leave gaps to be filled in by practice, the court held that in determining whether arbitration should be compelled, the run of arbitration cases, such as *Wilco v. Swan,* 346 U.S. 427, become irrelevant to the problem (pp. 578-582).

United Steelworkers v. Warrior and Gulf, supra, did not purport to deal with a manifest disregard for the law or to eliminate it as a ground compelling the setting aside of an arbitration award. What the case did set forth is that arbitration is a matter of contract

and a party cannot be required to submit to arbitration any dispute which it has not agreed to submit. The latter is applicable to the facts of the present case; there is no contract between the PMA and Local 13 regarding the employment of Local 13's officials, and Local 13 not only did not agree to arbitrate regarding their officials—they refused.

V.

THE DISTRICT COURT WAS NOT PREEMPTED BY THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD.

Appellees cite *San Diego Building Trades Council v. Garmon,* 359 U.S. 236 (1959) and subsequent cases for the proposition that all charges that assert, even arguably, unfair labor practices as defined by Sections 7 and 8 of the *National Labor Relations Act,* 29 U.S.C. Secs. 157 and 158, are within the exclusive jurisdiction of the National Labor Relations Board and the courts are preempted from hearing said matters in relation to the setting aside of an arbitration.

None of the appellees cited cases involve arbitration, and none is authority for appellees' proposition. The same appellees urged that preemption doctrine in *Williams v. Pacific Martime Association et al.,* 384 F. 2d 935 (9th Cir. 1967). Appellees' position was rejected in the *Williams* case by this Circuit, based upon the holding of *Vaca v. Sipes, supra,* 386 U.S. 171, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967).

The cases considering the subject of arbitration are uniformly contrary to those cited by appellees. In *Textile Workers of America v. Lincoln Mills of Alabama,*

353 U.S. 448, 77 S. Ct. 912, in holding that the United States District Court had the right to compel arbitration, and in speaking of the *National Labor Relations Act,* the Court at page 452 stated:

> "The bills as they passed the House and Senate, contained provisions which would have made the failure to arbitrate an unfair labor practice. * * * This feature of the law was dropped in conference. As the Conference Report stated, " 'Once parties have made a collective contract, the enforcement of that contract should be left to the usual processes of law *and not to the National Labor Relations Board.*' " (emphasis added).

In the case of *Carey v. General Electric Company,* 315 F. 2d 499 (2nd Cir., 1963) where similar contentions were made regarding exclusive jurisdiction being in the National Labor Relations Board in an attempt to prevent arbitration, the Appellate Court at page 503 stated:

> "Three of the union's grievances charge conduct on the part of the employer which the employer asserts can only be evaluated by the National Labor Relations Board. It is therefore urged that exclusive jurisdiction in the Board precludes adjudication or arbitration of the grievances under the so called preemption doctrine. See *San Diego Bldg. Trades Council v. Carmon,* 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed. 775 (1950), *Garner v. Teamsters Union,* 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 338 (1953). Judge Palmieri found the preemption doctrine inapplicable and ordered arbitration of each grievance. We agree and affirm the relevant portion of his order."

In the latter but similar case of *Carey v. Westinghouse Electric Corporation,* 375 U.S. 261, 84 S. Ct. 401, in upholding the right to compel the arbitration though the dispute could also involve an unfair labor practice, at page 268, the Court stated:

> "* * * But the existence of a remedy before the Board for an unfair labor practice does not bar individual employees from seeking damages for breach of a collective bargaining agreement in a state court, as we held in *Smith v. Evening News Assn.*, 371 U.S. 198, 83 S.Ct. 267, 9 L.Ed 2d 246. We think the same policy considerations are applicable here; and that a suit either in the federal courts, as provided by Sec. 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. Sec. 185(a), * * *"

The compelling reason behind the Court's ordering arbitration of matters which may be within the jurisdiction of the National Labor Relations Board is summed up in the Supreme Court's quoting in the *Carey* case, *supra,* at page 265, with approval, as follows:

> "The underlying objective of the national labor laws is to promote collective bargaining agreements through the arbitration process."

A further consideration is that the National Labor Relations Board has on occasion declined to exercise its jurisdiction in respect to unfair labor practices where the Federal Labor Policy would be best served by leaving the parties to their remedies at law. *Speilberg Mfg. Co.,* 112 N.L.R.B. 1080; *Consolidated Aircraft Corp.,* 57 N.L.R.B. 694. The Rule of *San Diego Building Trades Council v. Garmon, supra,* has been modified so that the Courts are not divested of jurisdiction in suits arising under Section 301 of the

National Labor Relations Act, Dowd Box Company v. Courtney, 368 U.S. 502, 513 (1962), Local 174 *Teamsters v. Lucas Flour Company,* 369 U.S. 95, 101 (1962). Appellees removed the matter to the Federal Court on the grounds that jurisdiction existed under Section 301.

The courts have themselves compelled arbitration in cases where the alleged breach of contract could clearly have been a basis for an unfair labor practice before the National Labor Relations Board.

United Steelworkers, etc. v. New York Mining Co., 273 F. 2d 352 (10 Cir. 1959);

Lodge No. 12, International Assn. of Machinists v. Cameron Iron Works, 257 F. 2d 457 (6th Cir., 1958);

United Electrical and Machine Workers v. Worthington Corp., 236 F. 2d 364 (1st Cir., 1956);

Freight Drivers and Helpers Local Union v. Quinn Freight Line, 195 F. Supp. 180 (D Mass 1961);

Retail Shoe and Textile Salesmen's Union v. Sears Roebuck, 185 F. Supp. 558 (N.D. Cal. 1950).

In similar respect, the Courts have compelled arbitrations involving alleged violations of no-strike provisions, *Drake Bakeries, Inc. v. Local 40 American Bakery and Confectionary Workers International,* 370 U.S. 254, 82 S. Ct. 1346, and the right to discharge employees for violation of a no-strike clause, *United Textile Workers v. Newberry Mills, Inc.,* (4th Cir. 1962) 315 F. 2d 217.

The question is well and authoritatively settled that in furtherance of the National Labor Policy, which

favors arbitration, the fact that otherwise unfair labor practices exist in or regarding an arbitration does not preempt the courts or restrict them in any manner. The alleged facts which would also constitute unfair labor practices were facts which the lower court was required to hear and consider.

Appellees continue to avoid the issue by referring to the deregistration of "longshoremen" who repeatedly violated the Collective Bargaining Agreement. Such is not that which occurred. The Coast Arbitrator, on review, considered ten (10) charges against Pete Velasquez. Of the ten (10) charges only two of them arose while Velasquez was a longshoreman. The definition of a longshoreman is clearly set forth in Section 1.71 of the "Trade Agreement." The other eight charges arose when Velasquez was not employed under the "Trade Agreement" but was solely employed by and paid by, Appellant, Local 13, pursuant to the terms of Local 13's Constitution-By-Laws and General Rules, which was Velasquez' only contract of employment [TR. p. 86].

The two matters occurring while Velasquez was a longshoreman were Cases 3 and 4, involving the SS president Quezon and the SS President Michigan. Each of these matters was briefly set out in Appendix V of appellant's opening brief. In each of these matters, Pete Velasquez and Gang No. 55 were following the instructions of ILWU President, Harry Bridges. Each of these two matters was a minor matter which appears to be an incident created by Appellee, PMA, for the purpose of deregistration.

Prior to the arbitration and the day following the last alleged complaint (the SS President Quezon, Case No. 3), the PMA's Area Manager, John McEvoy, who claimed to have been considering the matter for a long

time, stated that they were going to deregister Pete Velasquez for what he did as a union official; his reason being that Velasquez knew the contract too well. This is exactly what happened, for to be able to find Velasquez a repeated offender as required by Section 17.81 of the "Trade Agreement" the Coast Arbitrator included all of the charges occurring while Velasquez was employed as a union official. (Appendix II, opening brief).

The issue is not the deregistration of a longshoreman, it is the black-balling of a union official, not from a single employer, but from substantially an entire industry. This is similar treatment as that which was accorded Stanley Weir and some 81 others by appellees, which was referred to by the PMA's own agent, Robert Hall [TR. p. 449], and which appeared before this Circuit in *Williams v. Pacific Martime Association, supra.* Velasquez' real offense is that he incurred the wrath of Harry Bridges, at the same time he incurred the displeasure of the PMA, thus the conspiracy.

Appellees cite the case of *Crucible Steel Casting Company,* 101 N.L.R.B. 494, which does not support their position. In the cited case, the discharged employee, Flagg, was an employee of the Company at the time of the alleged act—he was not an official employed by the union. Flagg had repeatedly violated the terms of his employment with the Company and refused to carry out the instructions of his foreman. The cases in point regarding the impropriety of discharging an employee for union activities are set forth in Point D-2, pp. 55-61, of appellant's opening brief.

VI.

COMPLAINTS FIVE (5) THROUGH TWELVE (12) WERE NOT ARBITRATABLE UNDER THE GRIEVANCE PROCEDURE OF THE PACIFIC COAST LONGSHORE AGREEMENT.

Appellees concede "that several of the grievances against Pete Velasquez involve incidents that occurred while he was serving as a union business agent." The Area Arbitrator's decision, (Appendix I), the Coast Arbitrator's decision, (Appendix II), and the transcript of the arbitration proceedings show these to be cases five (5) through twelve (12) which is eight (8) of the ten (10) cases under which Velasquez was found guilty.

However, appellees argue that Velasquez had a "registration status," and this is what he lost in the grievance procedure. What appellees' argument ignores was that irrespective of any status, Velasquez was not employed as a longshoreman during the period of the alleged eight (8) work stoppages. Therefore, by appellees' own position, Velasquez was discharged for union activities. Such a discharge is violative of public policy as evidenced by the National Labor Policy and is a further violation of the *National Labor Relations Act. Fort Wayne Corrugated Paper Co. v. N.L.R.B.,* 111 F. 2d 869, 874 (7th Cir. 1950). The foregoing remains the rule, regardless of whether the discharge was motivated either wholly or only in part by Velasquez' union activity. *N.L.R.B. v. Barberton Plastic Products, Inc.,* 354 F. 2d 66, 68 (6th Cir. 1965). In similar respect, if the discharge was for union activities, such a discharge would have been improper, even if Velasquez was employed as a longshoreman during the time of all of the alleged work stoppages. *N.L.R.B. v. Western Meat Packers, Inc.,* 368 F. 2d 65 (10th Cir. 1966).

Appellees compound the wrong by not only discharging Velasquez from employment under the employers bringing charges against Velasquez, but also from employers who allege no violations. The matter is more completely covered in Point D-2 of appellant's opening brief.

Appellees continue by asserting what they refer to as "the very broad scope of the grievance arbitration provisions" and assert that through these provisions, the appellees, PMA and ILWU "did agree to give the arbitrator the power to make the award he made." (Appellees' Br. pp. 44, 45).

The present matter was arbitrated ex parte as to cases 5 through 12; therefore, the problem commences with Section 17.25 of the Trade Agreement. The arbitrator rendered one decision which included 12 cases, 10 of which Velasquez was found guilty on (Appendix I). The matter was then referred to the Joint Coast Labor Relations Committee under Section 17.261, which provides for such referral when the decision of the Area Arbitrator is "claimed by either party to be in conflict with this agreement." Section 17.261 further provides that where the Joint Coast Labor Relations Committee cannot agree, the matter will be sent to the Coast Arbitrator for *"review."* Section 17.15 provides that remedies outside the grievance procedure cannot be sought until the grievance procedure is exhausted.

The matter was referred to the Coast Labor Relations Committee, which did not agree and referred the matter to the Coast Arbitrator for review. At these levels the matter is handled for the Local by Appellee, ILWU [TR. p. 615, Finds. 15, 16].

The within proceeding neither allows the arbitrators to pick themselves up by their own boot straps and rule that there was jurisdiction where none existed,

nor does it allow the Coast Arbitrator to make a ruling that is contrary to Public Policy or the *National Labor Relations Act.*

In cases 3 and 4, jurisdiction existed; however, the ex parte arbitration and decision was confined in one decision by the Area Arbitrator along with the other cases, and appellant was required by the acts of Appellee, PMA, and the Area Arbitrator, to proceed as above, to exhaust such remedy. What appellees urge is that they can act without jurisdiction and obtain an *ex parte* award, which would be final and binding, by Section 17.25 the "trade agreement", unless the steps in Section 17.261 were taken, and thereby vest jurisdiction where jurisdiction did not initially lie.

If appellees were correct that the ILWU and the PMA agreed to give the arbitrator power to make the award he made, then such agreement is further evidence of breach of the duty of fair representation for which *both* the employer and the International are liable. *Vaca v. Sipes, supra,* p. 178.

Appellees continue by conceding that Local 13 raised the jurisdictional question at the level of the Area Arbitration, but contend that the issue of jurisdiction was not raised at the upper two levels. Appellees contend (p. 45) that the objecting to jurisdiction at the lower level raised an arbitrable issue under Section 17.53. If this contention is correct, then appellees err in contending that jurisdiction was not raised in the upper two levels for then the arbitrable issue, if any, was jurisdiction. The procedure was to "*review,*" and the responsibility of urging the jurisdictional issue at the upper two levels was that of the ILWU. If the ILWU chose to ignore the issue of jurisdiction and not urge it and instead agree with the employer, such conduct was merely further evidence of the violation

of the duty of fair representation and the connivance and conspiracy alleged. However, the Coast Arbitrator had before him the proceedings of the Area Arbitrator where jurisdiction was raised. [Ex. 7, pp. 4-7].

VII.

THE ARBITRATOR'S DECISIONS WERE AN IMPROPER MODIFICATION OF SECTION 17.81 OF THE TRADE AGREEMENT.

Appellees argue that the decision was not a modification of Section 17.81, and if it were, the modification was proper. Appellees then set forth Mr. Farley's statement before the Coast Arbitrator.

No such modification could be proper as Section 22.1 of the "Trade Agreement" provides that any modification, change, alteration, or amendment must be by written document executed by the parties. The ILWU and PMA could not even have amended the Agreement in writing to have it operate retrospectively and deny a member of his rights. What appellees further ignore is that the "Trade Agreement" cannot be modified or interpreted in such a manner as to be violative of Public Policy or the *National Labor Relations Act.*

The "Trade Agreement" was one which was approved by referendum ballot by the membership and no such interpretation had previously been given to Section 17.81 [TR. p. 447]. Further, as set forth in Point H-2 of appellant's opening brief, Section 17.81 was not subject to the interpretation given it by the Coast Arbitrator.

VIII.

THE ARBITRATION DECISIONS ARE AN ASSESSMENT OF DAMAGES AGAINST A UNION OFFICIAL FOR ALLEGED UNION ACTIVITIES.

Appellees, in their rational, ignore the facts, and contend that Local 13 is urging a proposition whereby it would be illegal to discharge any union member as he would be deprived from future earnings. Such is not appellant's position.

The issue involved is that Pete Velasquez was discharged for union activities which the employer contends violated the "Trade Agreement." If there was any penalty for violation of the "Trade Agreement" the employer was entitled to proceed against the Union but could not under any pretence, either directly or indirectly, penalize a union official for the activity. *Atkinson v. Sinclair Refining Company,* 370 U.S. 238.

Appellees put the matter thusly: "Simply stated, there was no money judgment." What appellees ignore is that the effect was the same, and the deregistration was tantamount to a money judgment. Pete Velasquez was deprived of his pension rights, mechanization fund rights, seniority in the industry as a winch driver, his future welfare rights, and further employment rights with substantially all of the employers in the industry [TR. pp. 399, 400]. Appellees cannot do indirectly that which they cannot do directly, for Section 301 must be liberally construed so as not to "undercut the Act and defeat its policy." *Atkinson v. Sinclair Refining Company, supra,* p. 249.

As long as the decision of the arbitrator is allowed to stand, the policy of the Act will be defeated and undercut and the officials of appellant, Local 13, will be required to take their orders from Appellee, PMA, or be subjected to the same penalty as Pete Velasquez. In cases numbered three (3) and four (4) Velasquez was following the directive of the International President, Harry Bridges (Appendix V). In cases numbered five (5) through twelve (12), Velasquez was following the orders of his superior officials and the membership [TR. pp. 395-397]. If a duly elected union business agent cannot rely upon the instructions of his own superiors, he must then, for his own safety, rely on the instructions of the employer, the Union then becomes a company dominated Union, contrary to the *National Labor Relations Act*. See Point D-3, pp. 55 to 61 of Appellant's opening brief, which is not replied to by Appellees.

IX.

POINTS IX, X, AND XI OF APPELLEES' BRIEF ARE ADEQUATELY COVERED IN APPELLANT'S OPENING BRIEF, AS SET OUT BELOW.

Point IX of Appellees' brief relating to Finding No. 19 is adequately covered in Point Q, pages 123, 127 of Appellant's opening brief.

Point X of Appellees' brief relating to whether the amended complaint stated a Cause of Action, is adequately covered in Point N, pages 119, 120, of Appellant's opening brief.

Point XI of Appellees' brief relating to the denial of relief to Appellant, Local 13, and confirming the ar-

bitration awards, is adequately covered in Points M and O, pages 116-119, 121, of Appellant's opening brief.

X.

DECISIONS IN RESPECT TO ARBITRATIONS OF COLLECTIVE BARGAINING AGREEMENTS ARE NOT AUTHORITY IN RESPECT TO CASES FIVE THROUGH TWELVE.

As previously set forth cases five through twelve did not arrive under a collective bargaining, or "trade agreement". As there was no trade agreement between appellant and appellees regarding appellant's officials and employees, the cases cited by appellees which they contend limit appellants rights under a collective bargaining agreement have no application which could restrict appellant's rights.

Conclusion.

Appellees have offered no response to appellant's contention that the arbitrator's decisions were void as being a means by the employer to dominate and coerce Appellant, Local 13, in violation of Section 8(a)(1)(2) of the *National Labor Relations Act,* as set forth in Point D-3 of appellant's opening brief, nor have appellees made response to the issue set forth in Point F of appellant's opening brief, that said decisions were void as being contrary to public policy.

That for the reasons set forth herein and in appellant's opening brief, this Honorable Court should reverse the Lower Court's judgment in its entirety and remand the matter to the Lower Court, with instruc-

tions that judgment be entered vacating and setting aside the opinions and decisions of the Area and Coast Arbitrator which are void and invalid as a matter of law, said invalidity being shown on the faces of the said opinions and decisions.

Respectfuly submitted,

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